



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Number: **200835037**  
Release Date: 8/29/2008

Date: June 4, 2008

UIL: 501.36-01, 501.33-00, 534.00-00

EO

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

Letter 4038(CG) (11-2005)  
Catalog Number 47632S

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert S. Choi  
Director, Exempt Organizations  
Rulings & Agreements

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter



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INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Date: June 4, 2008

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

A = Name of Individual

B = Name of Individual

N = Date

O = Name of State

X = Name of Entity

Y = Name of Entity

Z = Name of Entity

UIL Nos: 501.36-01

501.33-00

534.00-00

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

**Issue:**

Do you qualify for recognition of tax exemption under section 501(c)(3) of the Code?

**FACTS:**

The Articles of Incorporation indicate that you were incorporated on N as a domestic business corporation (See Exhibit 1) under the Business Corporation Law of O and that you have the authority to issue shares of stock. Your Articles of Incorporation do not limit your purposes to those within section 501(c)(3) of the Code or to dedicate your assets permanently to charity. Instead your Articles of Incorporation state, "The Corporation is formed to engage in any lawful act or activity for which a corporation may be organized under the Business Corporation Law, provided that is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained." A second document which you refer to as your "operating agreement" has not been filed with O.

The control of your organization appears to be vested in your compensated officers. You have not adopted bylaws. The minutes of your Organizational Meeting of the Board of Directors

state, "In the event of resignation or death of a member of the board, the officers will appoint a replacement." Thus, your board members are selected and appointed by your officers/founders. You have also not adopted a conflict of interest policy. You provided a sample conflict of interest policy which indicate: 1) Directors will vote on compensation and officers will not; 2) No director will have or do business with the corporation. However, your sample conflict of interest policy does not preclude you from conducting business with the related businesses of your officers, who also control your organization.

In your application, you describe your activities as follows:

[You] provide counseling and education services to the general public relating to consumer credit use...One-on-one consultations will be offered at times convenient to the consumer...Some public speaking engagements will be accepted and no fees will be charged. Counseling and classes will be offered to conform with the provisions of the Bankruptcy Abuse Protection and Consumer Protection act, and responsible use of credit. Reorganization and/or budgeting assistance will be offered to those who desire it... **The officers have contributed funds for start up costs. Funds for operations are expected to be received from clients for consultations and/or classes and reorganization plans.** Other funds are expected to be received from creditors that are being paid through reorganizations plans, but those fees would be optional.

You further detail the above activities as following in your response letters of July 15, 2007, September 19, 2007, and October 22, 2007:

1. Credit Counseling: You will gather financial information of a prospective client and inform the client about the process of your services, documents needed for the counseling, and fee information at the initial contact. You will also inform them that the services will be provided regardless of their ability to pay. Upon a prospect's agreement to use your service, you will set up two meetings which last about one hour each. You will make the third meeting available if the second meeting does not achieve object of the counseling.

The content of first meeting is as follows:

At the first meeting, budgeting and cost cutting measures will be discussed. Possible solutions will be presented in a general manner with the pros and cons of each. A plan of action will not be presented at this meeting. The client will leave with 'homework' consisting of writing down every cent they spend over the next 10 days to 2 weeks.

The second meeting will be set up within two weeks of the initial meeting to:

review the 'homework', discuss areas for improvement, and present options that the counselor has determined would be appropriate for this particular client. The options could include simple cost cutting measures, restructuring how much is paid to each creditor to pay balances down more quickly, the client negotiating with creditors to get rates and/or payments reduced, the counselor negotiating with creditors, possible home equity or refinancing if appropriate...or filing for bankruptcy. All options will be discussed in detail with the client to assure that they understand the ramifications of each choice. If

client agrees to a plan of action at this time, the details will be written up and the client and counselor will sign. This agreement has no legal standing...

At the end of the meetings, you will make recommendations to clients, which will include entering into a debt management plan and filing for bankruptcy. The fee for the initial consultation is \$     and includes a second (and possible third) appointment. If the above issue can not be resolved by the end of second or third session, you will refer the client to other agencies, such as social service agencies, career counseling agencies, or small business consulting entities for a better resolution. You did not elaborate whether the initial three counseling meetings are also a part of your debt management plan program, bankruptcy certification program, individual counseling sessions, or business analysis consulting program.

2. Debt Management Plans (DMPs): Your DMP program consists of interviews with clients, contact and negotiations with creditors, establishing payment plans for clients, and collecting and processing clients' payments and fees. These are typical practices of commercial debt consolidation companies. The debt management contract form shows further details about payment methods and due date, escrow account, cancellation policy, and monthly written reports. You will require a client to meet with a counselor for review at least every six months. Further discussion will take place if credit misuse problem is detected. You will also make check-in-calls every two to three months to check for any concerns and changes. However, you represent that you do not provide any on-going educational seminars or classes to the clients in the course of your DMP program.

The fee for this service will be \$     to \$     per month for individuals and couples and you will charge more if a business is involved. You state that you will waive fees if the client cannot afford to pay. The criteria for waiving fees are: 1) The client's living expenses are 90 percent or more of their income; 2) The client is unemployed; 3) The client is on medical leave or terminally ill; 4) The client is on Social Security Disability Income; 5) The client is a victim of a disaster. You will ask the creditor to pay fair share. You further state that if the creditor will not pay fair share, the plan will still be implemented as though they did.

3. Pre-Bankruptcy Certification: You will charge a fee of \$     which includes follow up sessions as needed. Fees may be reduced or waived if client is unable to pay.
4. Post-Bankruptcy Counseling Certification Course: You offer a certification course designed to meet the requirements of the bankruptcy court. The certification course is comprised of four, two-hour classes with flexible time schedules. The fee will be \$     for singles and \$     for couples. You state that the fees will be waived if the client is unable to pay. The material which will be used for this course is an     -page booklet. The content of the booklet as follows:

Introduction: One page  
 Learning About Money: One page  
 Keys to Financial Skills: One page  
 Plotting a Course: One page  
 The Beginning: Four pages  
 Credit Reports: Three pages

Credit Scores: Two pages

Warning Signs & Re-establishing Credit: One page

Plotting a Course for Financial Security: One page.

Glossary of Terms: One page.

Resources: Two pages

5. Discretionary Individual Counseling Sessions: **You will offer counseling on: Budgeting, Financial Management, Saving for a Goal, Pre-Marital Financial Counseling, and Couples Counseling.** You state that these are optional and separate sessions from debt management and bankruptcy related programs in your letter of September 19, 2007. You charge a \$     fee per session that lasts 60 minutes. **As these are optional services requested by the client, the client is expected to pay the full fees.**
6. Business Analysis: **You will provide business analysis consultation for partnerships and corporations.** You charge \$     per hour for this service.

In your letter of September 19, 2007, you state that you will have a listing in the yellow pages and advertise in local newspapers. You will also have targeted direct mailings to bankruptcy attorneys. The sample advertisement you provided states: "Offering credit counseling, budget counseling, goal setting, debt management, and certification for bankruptcy counseling classes for individual or business in our setting or yours." Other than the provision of counseling and consulting services, your advertisement makes no mention of any substantive educational program that you provide to the public.

You have not specifically apportioned your revenues, expenses and time between your various activities including debt management plans, pre-bankruptcy and post-bankruptcy counseling certification programs, discretionary individual counseling sessions, and business analysis activities. However, you state that 25 percent of your total activity is devoted to debt management plans. All other programs therefore comprise the remaining 75 percent of your total activities.

Your revenues, according to the projected financial data you provided, are as follows:

	Budget	Budget	Budget	%
Class Enrollment Fees	\$	\$	\$	47%
Creditor Commissions				12%
Consultation Fees				30%
Reorganization Plan Fees				11%
Total Income	\$	\$	\$	100%

According to financial data you provided on the Form 1023, Application for Recognition of Tax Exempt Status under Section 501(c)(3) of the Internal Revenue Code, you will not conduct any form of public fundraising or grant application program. **All of your revenue will come from fees charged to clients for services rendered or fair share that you will receive from creditors.**

You have also provided the following information regarding your expenses:

	Budget	Budget	Budget	%
Compensation of Officers	\$	\$	\$	59%
Other Salaries and Wages				11%
Occupancy Cost				11%
Depreciation & Depletion				1%
Fundraising expense				0%
Other expenses				18%
Total expense	\$	\$	\$	100%

You represent that all your activities at the present time are performed by two officers: A, president and secretary and B, vice president and treasurer. You state that you want your clients to have access to the best financial services possible. A's previous experience in banking and lending, and B's experience in accounting, taxes and investments should provide your clients with a personal roadmap to help them out of their current difficulty. You indicate that A owns X, a collection agency, mortgage banking and rental real estate company (See Exhibit 2) and Y a print advertising company in your letter of July 15, 2007. In this letter, you also stated that it is possible that you may place occasional print advertising with Y and such advertising would be placed at or below the rates offered to you by other companies. B owns an accounting and financial services company, Z. You indicate that Z will share office space and equipment with you at no cost. However, the meeting minutes of January 14, 2006 and April 21, 2007 showed that free service and rent is only for the start up period and will end when you begin to service clients and officers' compensation has been determined. B will also provide accounting and administrative services to you at no cost during the start up period. With respect to the performance of your activities, A's focus will be teaching the bankruptcy certification classes as required by the bankruptcy court and B's focus will be on budgeting, couples counseling, business analysis and debt management plans.

#### **LAW:**

Section 501(c)(3) of the Code exempts from federal income tax corporations organized and operated exclusively for charitable, educational, and other purposes, provided that no part of its net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the regulations holds that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or operation of law, be distributed for one or more exempt purposes...

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 1.501(a)-1(c) defines the words "private shareholder or individual" in section 501 to refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense and includes relief of the poor and distressed or of the underprivileged as well as the advancement of education.

Section 1.501(c)(3)-1(d)(3) of the regulations provides that the term "educational" refers to:

- (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
- (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

In Rev. Rul. 69-441, 1969-2 C.B. 115, the Service found that a nonprofit organization formed to help reduce personal bankruptcy by informing the public on personal money management and aiding low-income individuals and families with financial problems was exempt under section 501(c)(3) of the Code. Its board of directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions.

The organization provided information to the public on budgeting, buying practices, and the sound use of consumer credit through the use of films, speakers, and publications. It aided low-income individuals and families who have financial problems by providing them with individual counseling, and if necessary, by establishing budget plans. Under the budget plan, the debtor voluntarily made fixed payments to the organization, which held the funds in a trust account and disbursed the funds on a partial payment basis to the creditors. **The organization did not charge fees for counseling services or proration services.** The debtor received full credit against his debts for all amounts paid. The organization did not make loans to debtors or



negotiate loans on their behalf. Finally, the organization relied upon voluntary contributions, primarily from the creditors participating in the organization's budget plans, for its support.

**The Service found that, by aiding low-income individuals and families who have financial problems and by providing, without charge, counseling and a means for the orderly discharge of indebtedness, the organization was relieving the poor and distressed.** Moreover, by providing the public with information on budgeting, buying practices, and the sound use of consumer credit, the organization was instructing the public on subjects useful to the individual and beneficial to the community. Thus, the organization was exempt from federal income tax under section 501(c)(3) of the Code.

Section 4.03 of Rev. Proc. 2008-9, 2008-2 I.R.B., provides that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, the Service will generally issue a proposed adverse determination letter or ruling.

Harding Hospital, Inc. v. United States, 505 F.2d 1068 (6<sup>th</sup> Cir. 1974), provides that an organization seeking a determination letter or ruling as to the recognition of its tax-exempt status has the burden of proving that it satisfies all of the requirements of the particular tax-exemption category.

For an organization claiming the benefits of section 501(c)(3), "exemption is a privilege, a matter of grace rather than right." Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849, 857 (10<sup>th</sup> Cir. 1972), cert. denied, 414 U.S. 864 (1973). The applicant for tax exempt status under section 501(c)(3) has the burden of showing it "comes squarely within the terms of the law conferring the benefit sought." Nelson v. Commissioner, 30 T.C. 1151, 1154 (1958).

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services was not exempt under section 501(c)(3) because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. **Its primary purpose was not charitable, educational, nor scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit.** Moreover, it did not appear that the

corporation ever planned to charge a fee less than "cost." And finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the court relied on the "commerciality" doctrine in applying the operational test. Because of the commercial manner in which this organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax-exempt purpose. **"Among the major factors courts have considered in assessing commerciality are competition with for-profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, *inter alia*, whether the organization uses commercial promotional methods (e.g. advertising) and the extent to which the organization receives charitable donations."**

In Consumer Credit Counseling Service of Alabama, Inc. v. United States, 78-2 U.S. Tax Cas. 9660 (D.D.C. 1978), the court held an organization that provided free information on budgeting, buying practices, and the sound use of consumer credit qualified for exemption from income tax because its activities were charitable and educational.

The Consumer Credit Counseling Service, which had been recognized as exempt under section 501(c)(3) in a group ruling, is an umbrella organization made up of numerous credit counseling service agencies. In this case, these agencies provided information to the general public through the use of speakers, films, and publications on the subjects of budgeting, buying practices, and the sound use of consumer credit. They also provided counseling on budgeting and the appropriate use of consumer credit to debt-distressed individuals and families. The professional counselors used only 12 percent of their time for debt management programs. They did not limit these services to low-income individuals and families, but they provided their services free of charge. The court found that the law did not require that an organization must perform its exempt functions solely for the benefit of low-income individuals to qualify under section 501(c)(3). Nonetheless, these agencies did not charge a fee for the programs that constituted their principal activities. A nominal fee was charged for the debt management services but was waived when payment would work a financial hardship.

**The agencies received the bulk of their support from government and private foundation grants, contributions, and assistance from labor agencies and the United Way. An incidental amount of their revenue was from fees.** Thus, the court concluded that "each of the plaintiff consumer credit counseling agencies was an organization described in section 501(c)(3) as a charitable and educational organization." See also, Credit Counseling Centers of Oklahoma, Inc. v. United States, 79-2 U.S. Tax Cas. 9468 (D.D.C. 1979), in which the facts were virtually identical and the law was identical to those in Consumer Credit Counseling Centers of Alabama, Inc. v. United States, discussed immediately above.

Outside the context of credit counseling, individual counseling has, in a number of instances, been held to be a tax-exempt charitable activity. Rev. Rul. 78-99, 1978-1 C.B. 152 (free individual and group counseling of widows); Rev. Rul. 76-205, 1976-1 C.B. 154 (free counseling and English instruction for immigrants); Rev. Rul. 73-569, 1973-2 C.B. 179 (free counseling to pregnant women); Rev. Rul. 70-590, 1970-2 C.B. 116 (clinic to help users of mind-altering drugs); Rev. Rul. 70-640, 1970-2 C.B. 117 (free marriage counseling); Rev. Rul. 68-71, 1968-1 C.B. 249 (career planning education through free vocational counseling and publications sold at a nominal charge). **Overwhelmingly, the counseling activities described in these rulings**

were provided free, and the organizations were supported by contributions from the public.

In American Institute for Economic Research v. United States, 302 F. 2d 934 (Ct. Cl. 1962), the Court considered an organization that provided analyses of securities and industries and of the economic climate in general. It sold subscriptions to various periodicals and services providing advice for purchases of individual securities. The court noted that education is a broad concept, and assumed arguendo that the organization had an educational purpose. However, the totality of the organization's activities, which included the sale of many publications as well as the sale of advice for a fee to individuals, was indicative of a business. Therefore, the court held that the organization had a significant non-exempt commercial purpose that was not incidental to the educational purpose, and was not entitled to be regarded as exempt.

In KJ's Fund Raisers, Inc. v. Commissioner, T.C. Memo 1997-424 (1997), affirmed 82 AFTR 2d 7092 (1998), the Tax Court found that another gaming organization was not exempt. While the organization raised money for charitable purposes, it also operated for the substantial benefit of private interests. The organization's founders, Kristine Hurd and James Gould, were the sole owners of a bar, KJ's Place. The organization, through the owners and employees of KJ's Place, sold lottery tickets exclusively at KJ's Place during regular business hours. While in KJ's Place, the lottery ticket purchasers were sold beverages. The initial directors were Hurd, Gould, and a related individual. The initial board was replaced several times until Hurd and Gould were no longer on the board. **At all times Hurd and Gould were the organization's officers. Salaries had been paid to Hurd and Gould and rent had been paid to KJ's Place.** The organization maintained that the fact that salaries and rent were no longer paid in this fashion indicated the independence of the board. The Court took another view: "Although those practices ceased and are not in issue here, the current board of directors is composed of at least the majority of the same members who allowed those amounts to be paid." **This strongly suggests that Hurd and Gould are free to set policy for their own benefit without objection from the board.** Nothing in the record since July 1, 1994, indicates otherwise.

In P.L.L. Scholarship Fund v. Commissioner, 82 T.C. 196 (1984), an organization operated bingo at a bar (a for-profit enterprise) for purposes of raising money for scholarships. The board of directors included the bar's owners and accountant, and two other persons. The court reasoned that, because the bar owners controlled the organization and appointed its directors, the organization's fundraising activities could be used to the advantage of the bar owners, and thus, provide them with a maximum private benefit.

The organization claimed that it was independent because there was a separate accounting and that no payments were going to the bar. **The court maintained that the organization's and the bar's activities were so interrelated as to be "functionally inseparable."** A separate accounting did not change that fact. Thus, the organization did not operate exclusively for exempt purposes, but rather benefited private interests – the bar owners. Exemption was properly denied.

In Birmingham Business College, Inc. v. Commissioner, 276 F.2d 476 (5th Cir. 1960), the court denied tax exemption to an organization, in part because its net earnings were distributed to its shareholder for their personal benefit. The founder of the organization and his two sisters were the only shareholders; these three and two of their spouses were the organization's trustees.

The court found that the organization was operated as a business ultimately producing substantial revenues for its operators.

In Salvation Navy v. Commissioner, T.C.M. 2002-275 (2002), the court found that one of the reasons why the organization did not qualify for exemption from federal income tax was because it could not prove that its net earnings would not inure to the benefit of a private individual, its founder.

In Church by Mail, Inc. v. Commissioner, (1985) the Court affirmed a Tax Court decision. Church by Mail sent out sermons in numerous mailings. This required a great deal of printing services. Twentieth Century Advertising Agency provided the printing and the mailing. Twentieth Century was controlled by the same ministers. It also employed family members. The services were provided under two contracts. The contracts were signed by the two ministers for both Church by Mail and Twentieth Century. Church by Mail business comprised two-thirds of the business of Twentieth Century. In deciding for the government, the Court makes the following statement.

There is ample evidence in the record to support the Tax Court's finding that the Church was operated for the substantial non-exempt purpose of providing a market for Twentieth's services. The employees of Twentieth spend two-thirds of their time working on the services provided to the church. The majority of the Church's income is paid to Twentieth to cover repayments on loan principal, interest, and commissions. Finally, the potential for abuse created by the ministers' control of the Church requires open and candid disclosure of facts bearing upon the exemption application. Moreover, **the ministers' dual control of both the Church and Twentieth enables them to profit from the affiliation of the two entities through increased compensation.**

The Tax Court has stated that an application for tax-exempt status "calls for open and candid disclosure of all facts bearing upon [an Applicant's] organization, operations, and finances to assure [that there is not] abuse of the revenue laws. If such disclosure is not made, the logical inference is that the facts, if disclosed, would show that the [Applicant] fails to meet the requirements of section 501(c)(3)." Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531 (1980). See also, Founding Church of Scientology v. United States, 188 Ct. Cl. 490, 498, 412 F.2d 1197, 1201 (1969), cert. denied, 397 U.S. 1009 (1970). Furthermore, the courts have repeatedly upheld the Service's determination that an organization has failed to establish exemption when the organization fails to provide requested information. "[Applicant] has, for the most part, provided only generalizations in response to repeated requests by [the Service] for more detail on prospective activities....Such generalizations do not satisfy us that [applicant] qualifies for the exemption." Peoples Prize v. Commissioner, T.C. Memo 2004-12 (2004).

#### **RATIONALE:**

Based on the administrative record, we hold that you are not organized and operated for exempt purposes under section 501(c)(3) of the Code. An organization cannot be recognized as exempt under section 501(c)(3) unless it shows that it is both organized and operated exclusively for charitable or other exempt purposes.

Among other things, the articles of organization must demonstrate conclusively that the organization meets the organizational test of section 1.501(c)(3)-1(b)(1)(i) and section 1.501(c)(3)-1(b)(4) of the regulations. According to your Articles of Incorporation, you are formed as a for-profit entity in accordance with the Business Corporation Law of O. Additionally, your Articles of Incorporation permit you to issue stock, enabling your earnings to inure to the private benefit of your stockholders. Your Articles of Incorporation neither limit your purposes to one or more exempt purposes nor dedicate your assets to an exempt purpose(s) under section 501(c)(3) of the Code.

In addition, the application and supporting documentation must demonstrate conclusively that the organization meets the operational test of section 1.501(c)(3)-1(c)(1) of the regulations. Also, an organization exempt under section 501(c)(3) of the Code cannot allow its net earnings to inure to the benefit of private individuals and cannot be organized to benefit private interests.

We hold that you do not satisfy the operational requirement to be recognized as exempt under section 501(c)(3) of the Code. In fact, the administrative record demonstrates that you are operated for a substantial non-exempt commercial purpose. Like a commercial trade or business, you provide services to individuals, corporations and partnerships for which you charge a fee. Your services include budget counseling, financial management, saving for a goal consultations, pre-marital financial counseling, couples counseling, debt management plans, pre-bankruptcy counseling and businesses analysis.

Our examination of the information you submitted shows that you operate for substantial non-exempt commercial purposes in contravention of section 501(c)(3). To qualify under section 501(c)(3), an organization cannot have a non-exempt purpose that is more than insubstantial. However, your DMPs and consulting activities occupy more than insubstantial portion your total activity and revenues. Selling and administering debt management plans (DMPs), the provision of "Discretionary Individual Counseling Sessions", and business analysis consultations for partnerships and corporations are not inherently a charitable or educational activity and constitute commercial activities. Your activities appear to have an underlying commercial motive that distinguishes your educational activities from that carried out by a university. See Better Business Bureau of Washington D.C., Inc. v. United States *supra*.

You are remarkably similar to the organization described in B.S.W. Group, Inc. v. Commissioner, *supra*. Your activities constitute the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Your primary purpose is not charitable or educational, but rather commercial. Like a for-profit business, the vast majority of your revenues are from fees paid by those who receive consulting or other services from you. While charitable institutions often do provide services to individuals, the cost is generally subsidized by contributors who do not receive anything in return. Your fees however, are set high enough to recoup all projected costs and to produce a profit.

You meet the factors cited in Airlie Foundation v. Commissioner, *supra*, exemplifying a commercial operation. The services you provide, including financial management, business analysis, budget counseling, debt consolidation, pre-marital counseling, saving for a goal consultations, are in direct competition with similar financial planning or investment firms. These are services are typical of a for-profit investment or financial planning consulting firm. Like a for-profit business, your services are rendered in exchange for a fee. You also advertise your services to the public in a like manner to a for-profit business and do not limit your counseling

and consulting services to a charitable class of individuals. Your income is derived solely from fees charged from services rendered and you do not receive any form of charitable contributions from the public. Moreover, you have provided no evidence that your fees will bear any relation to the costs of providing your service, and will not be a purely profit-making tool. You have provided no economic rationale for the amount you will charge for your services. You have provided no financial studies or other information that would justify the amount of any particular fee. Therefore, you have met many of the factors cited Airlie Foundation v. Commissioner, *supra*, in demonstrating a commercial manner of operation.

Moreover, you represent that you will not limit your services to a particular charitable class of individuals such as minorities, low-income, or elderly. There are no limitations of your services, except with respect to those individuals and their families who would clearly benefit from those services. Therefore, you are unlike the organization described in Revenue Ruling 69-441, 1969-2 C.B. 115, which aided low-income individuals and families who have financial problems, thereby relieving the poor and distressed. The organization described in the Revenue Ruling 69-441 also provided educational and counseling programs free of charge. Except for discretionary individual counseling and business analysis consultation services, you state that you will waive your fees for those unable to pay. However, you have provided no evidence that your clients will ever receive free services, or services according to their ability to pay. The information you present to the public and your advertisements do not show any written evidence of your fee waiver policy.

Your financial structure does not resemble that of a typical charity either because it solely relies upon revenues earned by selling your DMPs, business consultation, and bankruptcy certification services to the public. In fact you do not have any plans to raise funds from the public. Thus, you are unlike the organizations described in Consumer Credit Counseling Service of Alabama, Inc. v. United States, *supra*, which received the bulk of their support from government and private foundation grants, contributions, and assistance from labor agencies and the United Way. These organizations only received an incidental amount of their revenues from fees. Therefore, you are operated in the manner of a trade or business.

You have also failed to substantiate that you follow an educational methodology. Indeed your operational focus is on your debt management plans and bankruptcy certification program for fees rather than financial education. One clear example of this reliance can be found in your advertising material which solely emphasizes your services for a fee without any references to the operation of a substantive educational program (See Exhibit 3). You do not provide any form of on-going education in your counseling or financial services programs. Although there is an educational component to your post-bankruptcy certification program, the public benefit from this single program appears limit compared to your overall financial counseling and consulting programs/services you provide. Once the client is on the DMP, you do not conduct any educational programs for these participants. The pre-bankruptcy counseling consists primarily of gathering information from the client and determining whether they want to pursue this course of action. Because your officer, B, is a financial planner, you also provide investment consulting, business consulting and other financial planning services. It appears that your counseling activities traverse far beyond counseling of individuals regarding their spending habits and budgeting concerns and into the realm of financial investment advice for individuals and businesses. It is clear from your own description that your primary purpose is the sale and servicing of DMPs, bankruptcy certifications, and other services for a fee rather than public education. Accordingly, we conclude that you have a substantial non-exempt commercial

purpose. You are similar to the organization described in American Institute for Economic Research v. United States, *supra*, in which the court held that the organization's sale of publications and sale of advice for a fee to individuals, were indicative of a business. Therefore, the organization had a significant non-exempt commercial purpose that was not incidental to the exempt purpose, and was not entitled to be regarded as tax exempt.

A fundamental requirement for an organization that seeks exemption from federal income taxes is that it benefits the public rather than its creator, shareholders, or persons having a personal or private interest in the activities of the organization. (See Sections 1.501(c)(3)-1(d)(1)(ii) and 1.501(c)(3)-1(c)(2) of the Regulations.) Your organizational structure and manner of operation result in inurement to your officers and their related for-profit businesses in the form of business referrals, compensation, payment for services and rent. As your board of directors is appointed by your officers, it is clear that the control of the organization is vested with your officers, A and B. Akin to the organization described in KJ's Fund Raisers, Inc. v. Commissioner, *supra*, even though you state that your board of directors will establish the salaries, rental payments to Z, advertising fees to Y and possibly payments for accounting and administrative services to B in the future, since your board is appointed by your officers, this fact strongly suggest that A and B are free to set policy for their own benefit without objection from the board. Substantially all of your proceeds (almost 70 percent of total revenue) will be returned to your officers, A and B, in the form of compensation and other payments, such as rent. Similar to the organization described in Birmingham Business College, Inc. v. Commissioner, and Church by Mail, *supra*, you are operated as a trade or business ultimately producing substantial revenues for your operators, A and B.

There does not appear to be a clear separation between your activities and those of Z, a financial services company owned by your officer, B. Z, will share office space and equipment with you. Moreover, as a financial planner, B will be providing accounting and administrative services to you. Both you and Z provide some indistinguishable services such as financial management services, budget analysis for corporations and businesses, and other forms of financial counseling. Although you claim that Z has separate accounting and is an independent for-profit entity, your operations are comparable to the organization described in P.L.L. Scholarship Fund v. Commissioner, *supra*, in that your activities and those of Z, are functionally inseparable. You also resemble the organization described in Salvation Navy v. Commissioner, *Supra*, in that you have not proved that your net earnings would not inure to the benefit of private individuals, your officers and founders. Hence, it appears that a substantial purpose of your purpose is to serve the private benefit A and B and their private businesses, Y and Z, resulting in prohibited inurement and is therefore, precluded from recognition of tax exemption under section 501(c)(3) of the Code.

You have failed to describe your operations in sufficient detail to show that you are furthering an exclusively educational purpose. As described in Harding Hospital, Inc. v. United States, Nelson v. Commissioner, Christian Echoes National Ministry, Inc. v. United States, and Rev. Proc. 2008-9, *supra*, the burden is on the applicant organization to demonstrate that it has met the operational test as specified under section 501(c)(3) of the Code. You did not provide any evidence that your DMP and bankruptcy counseling will be an incidental adjunct to a substantial and substantive program of public education and individual counseling. You have provided no materials that indicate you will have a substantive on-going educational program directed to the individuals and families you serve in your DMP and your bankruptcy certification programs. Your primary goal and a majority of your time appear to be devoted to the provision of financial

management, budget counseling, business analysis and selling and maintaining DMPs, thereby furthering a substantial non-exempt commercial purpose. You have not shown that you are not operated to serve the private benefit of your officers who appoint your board of directors.

In summary, you do not meet the requirements under section 501(c)(3) of the Code because you fail both the operational and organizational tests. Because your primary purpose is to sell DMPs and bankruptcy certification rather than to educate and counsel the general public, we find that you operate for a substantial non-exempt commercial purpose. In addition, you have not shown that your operational and financial structure do not result in inurement to your officers and their related for-profit businesses in direct contravention of section 501(c)(3) of the Code. Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code or under any other section of the Internal Revenue Code, and you must federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.



You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". These items include:

1. The organization's name, address, and employer identification number;
7. A statement that the organization wants to appeal the determination;
8. The date and symbols on the determination letter;
9. A statement of facts supporting the organization's position in any contested factual issue;
10. A statement outlining the law or other authority the organization is relying on; and
11. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

**"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."**

Your appeal will be considered incomplete without this statement.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

**US Mail:**

Internal Revenue Service  
EO Determinations Quality Assurance  
Room 7-008

**Street Address:**

Internal Revenue Service  
EO Determinations Quality Assurance  
Room 7-008

P. O. Box 2508  
Cincinnati, OH 45201  
Attn:

550 Main St, Federal Bldg.  
Cincinnati, OH 45202  
Attn:

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert Choi  
Director, Exempt Organizations  
Rulings & Agreements

Enclosures:  
Exhibits 1-3  
Publication 892